

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM T. JOHNSON,

Plaintiff,

v.

CITY OF POULSBO; JOHN HALSTED;
KITSAP COUNTY; JON VANGESEN;
NICOLE MENGE; DALE SCHUSTER; and
RANDALL DRAKE,

Defendants.

Case No. C06-5261 FDB

ORDER ON MOTION TO COMPEL
AND FOR AWARD OF
ATTORNEY'S FEES AND
SANCTIONS

This matter comes before the Court on Defendants' motion to compel discovery and for an award of attorney's fees and sanctions. After having reviewed all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants the motion for award of attorney's fees. The motion to compel is denied as moot, the Plaintiff having provided the requested discovery in response to this motion.

INTRODUCTION AND BACKGROUND

This suit for damages for violation of constitutional guaranties against unreasonable search and seizure was filed by Plaintiff on May 16, 2006. Trial is scheduled for January 28, 2008.

1 On January 24, 2007 Plaintiff was served with Defendant Kitsap County's First Set of
2 Interrogatories. Responses were due 30 days later on February 24, 2007. Plaintiff requested a
3 three-week extension and as a professional courtesy, Defendant agreed to extend the time for
4 response until March 12, 2007. Discovery responses were not provided.

5 On March 16, 2006 the parties conducted a Rule 37 conference to resolve their discovery
6 dispute. During the conference Plaintiff's counsel informed Defendant that the discovery was in
7 draft form and had not yet been reviewed.

8 On March 27, 2007 Defendant filed the present motion to compel discovery. In response to
9 the motion, discovery responses were provided to Defendant on April 9, 2006. Plaintiff's counsel
10 sole excuse for the late filing is his heavy workload.

11 **DUTY TO COMPLY WITH DISCOVERY REQUEST**

12 Defendants request an order compelling Plaintiff to provide responses to the First Set of
13 Interrogatories and Request for Production. As Defendant's statement of facts are not contested, the
14 Court adopts the facts as set forth in Defendant's motion. Plaintiff's response indicates that the
15 discovery has now been provided.

16 The Court finds it unnecessary to compel discovery.

17 **SANCTIONS**

18 Rule 37(c) provides that a party that without substantial justification fails to disclose
19 information required by Rule 26(a) is not, unless such failure is harmless, permitted to use as
20 evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In
21 addition to or in lieu of this sanction, the court, on motion and after affording a opportunity to be
22 heard, may impose other appropriate sanctions. Sanctions may include requiring payment of
23 reasonable expenses, including attorney's fees, caused by the failure.

24 In order to avoid sanctions, Plaintiff has the burden of establishing that he had a "substantial
25 justification" for failure to respond and that any late disclosure is "harmless." Yeti by Molly, Ltd. v.

Deckers Outdoor Corp., 259 F.3d 1101, 1107 (9th Cir. 2001). Counsel's purported justification is unsubstantial. Counsel's workload does not provide good cause for lack of compliance with discovery rules. Defendants provided an extension to Plaintiff and yet there was no response. The Court finds that a sanction in the amount of a reasonable attorney's fee incurred by Defendants in bringing this discovery motion is appropriate. The Court finds that \$500.00 is a reasonable compensation for the fees incurred by Defendants in having to bring this action.

CONCLUSION

The Court having reviewed the pleadings and the remaining record, and for the reasons set forth above,


IT IS HEREBY ORDERED:

(1) Defendants' Motion to Compel Discovery [Dkt #42] is **MOOT**.

(2) Defendants' request for an award of attorney's fees [Dkt. #42] is **GRANTED**. No later than April 27, 2007, Plaintiff and /or counsel for Plaintiff must pay counsel for Defendant attorney's fees in the amount of \$500.00 as terms for having had to file this motion to compel.

(3) Failure to comply with this Order may result in immediate dismissal of this action, with prejudice.

DATED this 16th day of April, 2007.


FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE